

HOUSE No. 1295

By Ms. Wolf of Cambridge, petition of Alice K. Wolf and others relative to notifying tenants of certain changes in affordable housing agreements. Housing.

The Commonwealth of Massachusetts

PETITION OF:

Alice K. Wolf
Byron Rushing
Timothy J. Toomey, Jr.
Rachel Kaprielian
Douglas W. Petersen
Barbara A. L'Italien
John P. Fresolo
Denise Provost
Willie Mae Allen
William G. Greene, Jr.
David B. Sullivan
Mary E. Grant
William N. Brownsberger
Edward M. Augustus, Jr.
Patricia D. Jehlen
Martha M. Walz
Joyce A. Spiliotis
Michael E. Festa
Elizabeth A. Malia
Carl M. Sciortino, Jr.
Thomas M. Stanley
Kay Khan
James B. Eldridge
Jeffrey Sanchez

In the Year Two Thousand and Seven.

AN ACT ENABLING CITIES AND TOWNS TO PRESERVE PUBLICLY ASSISTED AFFORDABLE HOUSING.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize municipalities to prevent the loss of publicly assisted housing by providing them with the opportunity to preserve such housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2004 Official Edition, are
2 hereby amended by adding after chapter 40S the following
3 chapter:—

CHAPTER 40T.
PRESERVATION OF PUBLICLY ASSISTED HOUSING.

6 Section 1. As used in this chapter, the following words shall have
7 the following meanings:-

8 “Affected municipality”, any city or town in which publicly
9 assisted housing or a publicly assisted housing development is
10 located.

11 “Affordability restrictions”, limits on rents that owners may
12 charge for occupancy of a rental unit in publicly assisted housing
13 and limits on tenant income for persons or families seeking to
14 qualify as tenants in publicly assisted housing.

15 “Government program”, a program or combination of programs
16 described in the definition of publicly assisted housing.

17 “Owner”, a person, firm, partnership, corporation, trust, organiza-
18 tion or other entity that holds title to a publicly assisted housing
19 development.

20 “Prepayment”, the payment in full or refinancing of the federally
21 insured or federally held mortgage indebtedness prior to its original
22 maturity date, or the voluntary cancellation of mortgage insurance,
23 on a publicly assisted housing development that would have the
24 effect of removing the affordability restrictions applicable to the
25 assisted housing development under the programs described there-
26 under.

27 “Publicly assisted housing” or “publicly assisted housing devel-
28 opment”, housing that receives government assistance under any of
29 the following programs:-

30 (1) Section 8 of the United States Housing Act of 1937, as
31 amended, 42 U.S.C. Section 1437f; as it applies to new construction,
32 substantial rehabilitation, moderate rehabilitation, property disposi-
33 tion and loan management set-aside programs, or any other program
34 providing project-based rental assistance;

35 (2) Section 42 of the Internal Revenue Code, as amended, 26
36 U.S.C. Section 42, the federal Low-Income Housing Tax Credit Pro-
37 gram;

38 (3) Section 101 of the Housing and Urban Development Act of
39 1965, as amended, 12 U.S.C. Section 1701s as it applies to programs
40 for rent supplement assistance thereunder;

41 (4) Section 202 of the Housing Act of 1959, as amended, 12
42 U.S.C. Section 1701q;

43 (5) Section 221(d)(3) of the National Housing Act of 1934, as
44 amended, 12 U.S.C. Section 17151(d)(3) or (5), the below market
45 interest rate program;

46 (6) Section 221(d)(4) of the National Housing Act, as amended,
47 12 U.S.C. Section 17151 (d)(4), to the extent the project's rents are
48 regulated pursuant to a government agreement;

49 (7) Section 236 of the National Housing Act, as amended, 12
50 U.S.C. Section 1715z-1;

51 (8) Section 515 of the Housing Act of 1949, as amended, 42
52 U.S.C. Section 1485;

53 (9) Section 521 of the Housing Act of 1949, as amended, 42
54 U.S.C. Section 1490a;

55 (10) The federal Urban Development Action Grant, "UDAG", as
56 amended, 42 U.S.C. Section 5318, to the extent project's rents are
57 regulated pursuant to a government agreement;

58 (11) The federal Housing Development Action Grant, "HODAG",
59 as amended, 42 U.S.C. Section 1437o, to the extent project's rents
60 are regulated pursuant to a government agreement;

61 (12) Chapter 121A of the general laws, to the extent project's
62 affordability of dwelling units is regulated; or

63 (13) Section 13A of Chapter 708 of the Acts of 1966.

64 (14) Section 61 of Chapter 62 of the General Laws.

65 "Tenant", a tenant, subtenant, lessee, sub-lessee or other person
66 entitled to possession, occupancy or benefits of a rental unit within
67 the assisted housing.

68 "Termination", any one or more of the following conditions that
69 would have the effect of removing any affordability restrictions:—

70 (1) non renewal of a government program contract;

71 (2) termination of a government program contract;

72 (3) non renewal of a government program mortgage contract;

73 (4) termination of a government program mortgage contract;

74 (5) termination of an affordability restriction under a government
75 program;

76 (6) payment in full of a government program mortgage;

77 (7) expiration of an affordability restriction under a government
78 program;

79 (8) any action that may result in the full or partial termination of a
80 government program's regulatory or financial assistance agreement;
81 or

82 (9) any action that may result in the full or partial termination of a
83 government program's affordability restrictions.

84 Section 2. (a) An owner of publicly assisted housing may not
85 complete prepayment, or complete a termination unless, not less
86 than 12 months before the prepayment or termination, the owner
87 submits to all tenants of the publicly assisted housing to the mayor
88 or board of selectmen of any affected municipality, to the Commu-
89 nity Economic Development Assistance Corporation, and to the
90 department of housing and community development, a notice of
91 intent to complete prepayment, or complete termination. Every such
92 required notice shall:— (1) include the address of any publicly
93 assisted housing, characteristics of the property including the
94 number of units, and the names and addresses of the owners; (2)
95 include the date on which the owner intends to complete prepay-
96 ment, or complete termination; (3) include a detailed list of any and
97 all affordability restrictions applicable to the property; and (4)
98 include a statement that the affected municipality has the right to
99 purchase the property.

100 (b) Notwithstanding any provision of law to the contrary, within
101 60 days after the date of the owner's notice pursuant to subsection
102 (a), the affected municipality may notify the owner that it has chosen
103 a designee to act for and on behalf of the affected municipality or
104 that the affected municipality will act without a designee. The
105 affected municipality, in selecting a designee, shall enter into an
106 agreement with a nonprofit corporation, local or regional housing
107 authority, or private purchaser in which the nonprofit corporation,
108 local or regional housing authority, or private purchaser agrees to
109 maintain the development in a manner that preserves the housing
110 development's existing affordability restrictions. The agreement
111 shall set forth the minimum length of time that the affordability
112 restrictions shall be in effect, which shall be no less than 99 years.
113 The affected municipality shall have the right to bring an action for
114 specific performance or other injunctive relief for enforcement of the
115 agreement, and the agreement must contain provisions to this effect
116 along with such other remedies for breach as the affected munici-
117 pality and the nonprofit corporation, local or regional housing
118 authority, or private purchaser may agree. Once such an agreement is
119 entered into, the nonprofit corporation, local or regional housing
120 authority or private purchaser shall assume all rights and responsibil-

121 ities attributed to the affected municipality under this chapter. An
122 affected municipality purchasing publicly assisted housing or a pub-
123 licly assisted housing development without choosing a designee
124 under this chapter shall maintain the development in a manner that
125 preserves the publicly assisted housing or housing development's
126 existing affordability restrictions for not less than 99 years from the
127 date of purchase of such development.

128 (c) Within 60 days after the affected municipality has notified the
129 owner of its election to proceed with or without a designee, the
130 owner shall, before completing prepayment or completing termina-
131 tion, provide to the affected municipality or its selected designee, a
132 bona fide offer for sale of the property which shall contain the essen-
133 tial terms of the sale, including at a minimum, the following:—

134 (1) the sales price; (2) the terms of seller financing, if any,
135 including the amount, the interest rate, and amortization rate thereof;
136 (3) the terms of assumable financing, if any, including the amount,
137 the interest rate, and the amortization rate thereof; (4) proposed
138 improvements, if any, to the property to be made by the owner in
139 connection with the sale; and (5) physical access to the property so
140 that representatives of the affected municipality or its selected
141 designee may conduct an inspection of the premises.

142 (d) The affected municipality or its designee, shall notify the
143 owner in writing, within 60 days after the receipt of the bona fide
144 offer of sale, of its intent to purchase the assisted housing.

145 (e) The owner shall, after receiving a notice pursuant to subsec-
146 tion (d), comply with any reasonable request to make documents
147 available to the affected municipality or its designee, during normal
148 business hours at the owner's principal place of business within 15
149 days of receiving such a request, including but not limited to:—

150 (1) a floor plan of the development; (2) itemized lists of monthly
151 operating expenses, capital expenditures in each of the 2 preceding
152 calendar years and deferred maintenance costs; (3) the amount of
153 project reserves; (4) utility consumption rates; (5) copies of financial
154 and physical inspection reports filed with federal, state or local agen-
155 cies; (6) the most recent rent roll; (7) a list of tenants; (8) a list of
156 vacant units; and (9) a statement of the vacancy rate at the develop-
157 ment for each of the 2 preceding calendar years.

158 (f) The municipality or its designee shall, within 90 days after it
159 notifies the owner of its intent to purchase, provide the owner with a

160 bona fide offer to purchase evidenced by a purchase and sale con-
161 tract reflecting a sales price and terms agreed to by the parties or the
162 sales price and terms determined pursuant to subsection (g) of this
163 section and an earnest money deposit equal to 3 percent of the sales
164 price in the bona fide offer to purchase, or 500,000 dollars,
165 whichever is less. Such an earnest money deposit shall be held by an
166 escrow agent, who is mutually acceptable to the owner and the
167 municipality or its designee. This earnest money deposit shall be
168 non-refundable upon execution of the purchase and sale contract by
169 both parties, except for non-performance by the seller of the terms of
170 the contract.

171 (g) If the parties are unable to agree to a sales price within the
172 first 60 days of the 90 day period specified in subsection (f), the sale
173 price of the assisted housing shall be based upon its fair market
174 value, based on its highest and best use, without affordability restric-
175 tions, as determined by 2 independent appraisers qualified to per-
176 form multifamily housing appraisals. One appraiser shall be selected
177 and paid by the owner and the other shall be selected and paid by the
178 municipality or its designee. If the appraisers fail to agree upon a fair
179 market value, the owner and the municipality or its designee shall
180 either jointly select and pay a third appraiser whose appraisal shall
181 be binding, or agree to take an average of the 2 appraisals. All
182 appraisers shall be certified Members of Appraisal Institute. The
183 determination of the sales price pursuant to this subsection shall be
184 completed within the 90 day period specified in subsection (f) of this
185 section.

186 (h) The affected municipality or its designee shall agree to close
187 on the sale within 90 days from the date the parties sign the purchase
188 and sale agreement.

189 (i) If the affected municipality or its designee fails to provide
190 notice to the owner pursuant to subsections (b), (c), or (d) or fails to
191 meet the requirements of subsections (f), (g) or (h), the owner is
192 released from any and all requirements and obligations under this
193 section.

194 (j) Any notice provided for in this chapter shall be deemed given
195 when a written notice is delivered in person or mailed by certified or
196 registered mail, return receipt requested, to the party to whom notice
197 is given.

198 (k) The Community Economic Development Assistance Corporation shall provide assistance to affected municipalities or its designee concerning the content, format, delivery and publication of notices referred to in this section.

202 (l) For the purposes of this chapter, the affected municipality or its designee, shall not be subject to the provisions of section 16 of chapter 30B.

205 Section 3. The provisions of this chapter shall not apply to any of the following:- a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; or a deed-in-lieu-of foreclosure or an agreed upon renegotiation, restructuring or repayment of past due debt between a lender and an owner; -a transfer by gift, devise or operation of law; any housing development with respect to which the owner has received a written commitment from the federal Department of Housing and Urban Development, the Massachusetts Department of Housing and Community Development, the Massachusetts Housing Partnership Fund, the Massachusetts Housing Finance Agency, the Massachusetts Development Finance Agency, or other similar government or quasi-public agency in connection with a proposed sale, transfer, other disposition, or refinancing of such development, for any one or more of the following: (1) mortgage financing; (2) an allocation of low-income housing tax credits; (3) an extension or renewal of a government program contract providing affordability for the development; or (4) funding or financing directed to preserving affordability, resulting in no less than 80 percent of the development's current affordable units; or any other disposition of publicly assisted housing in a manner pursuant to which the property after such disposition continues to be publicly assisted housing as defined in this section. Provided, if any development shall be subject to financing by any of the public agencies specifically named above, the provisions of subsection (b) of section 2 shall not take effect unless and until any public agency expressly named above shall fail to provide a commitment as set forth in this section, in (1) to (4) inclusive, within 180 days of the proposed prepayment or termination.

233 Section 4. If any tenant in good standing under the terms of his lease in any affordable unit, with affordability restrictions, involuntarily vacates such unit or is forced to pay market rate, so long as the tenant remains income eligible for subsidized housing the owner

237 shall:—(a) locate, and pay the cost of relocating to, a comparable
238 affordable unit or (b) pay the tenant the difference between the
239 market rent and affordable rent for which the tenant qualifies for a
240 period of 5 years.

241 Section 5. The attorney general of the commonwealth, the
242 affected municipality or its designee, or one or more tenants in the
243 publicly assisted housing, may bring a civil action against an owner
244 who has violated this chapter. An owner found to have violated any
245 provision of this chapter shall, in addition to any other damages, pay
246 a civil penalty to each tenant in the publicly assisted housing in the
247 amount of \$500 per tenant, and shall also pay the attorney's fees and
248 costs incurred in bringing the action.

249 Section 6. The Massachusetts Department of Housing and Eco-
250 nomic Development shall promulgate regulations to implement the
251 provisions of this chapter within forty-five days of the effective date
252 of this act.